



Agenda Date: 6/06/01
Agenda Item: 3C

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

IN THE MATTER OF THE ALLEGED FAILURE OF)
RCN OF NEW JERSEY (RCN) TO CONFORM TO)
CERTAIN PROVISIONS OF THE NEW JERSEY)
STATE CABLE TELEVISION ACT, N.J.S.A.)
48:5A-1 et seq. AND THE NEW JERSEY)
ADMINISTRATIVE CODE, N.J.A.C. 14:18-1.1)
et seq.)

ORDER ACCEPTING OFFER OF SETTLEMENT

DOCKET NO. CC98070467

Philip J. Passanante, Esq., Princeton, New Jersey, on behalf of RCN of New Jersey.

Alampi, Arturi, D'Argenio & Guagliardi, Englewood Cliffs, New Jersey, by Robert G. Goode, Esq., on behalf of RCN of New Jersey.

BY THE BOARD:

RCN of New Jersey ("RCN"), a cable system operator with its principal office located at 105 Carnegie Center, Princeton, New Jersey 08540-6215, is a franchised cable television operator, which provides cable services to approximately 80,799 New Jersey subscribers in 31 communities throughout Hunterdon, Mercer, Morris and Somerset Counties. The Board's Office of Cable Television Inspection and Enforcement Bureau ("Office"), after conducting a routine compliance review and serving notification of its allegations on RCN by letter dated November 13, 1997, has alleged that RCN was not conforming to certain provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq.; more specifically, N.J.A.C. 14:18-2.1(a) Plant Construction; N.J.A.C. 14:18-3.7(a)5 Bills for Service; Form of Bill; N.J.A.C. 14:18-6.5 Complaint Records; N.J.A.C. 14:18-3.18(a)1, 2, 4, 5, 6 and (b)1, 2, N.J.S.A. 48:5A-26(c) and 48:5A-56(b) Customer Rights Notifications; N.J.S.A. 48:5A-38 and 48:5A-40 Board Approval for Combinations, Mergers or Consolidations and N.J.S.A. 48:5A-43 Indebtedness of Property or Encumbrance of Assets. The aforementioned requires all cable systems in New Jersey to conform to these provisions with the intent to provide protection to the cable consumer.

As a result of correspondence and telephone conversations between RCN and the Office, RCN submitted an Offer of Settlement concerning the following alleged non-conforming practices:

- A. The Office alleges RCN failed to comply with the Bonding and Grounding provisions of the National Electric Code ("NEC"), as required by N.J.A.C. 14:18-2.1(a).

- B. The Office alleges RCN failed to disclose all monthly service packages and corresponding rates available by customer classification in its 1996 annual notifications, as required by N.J.A.C. 14:18-3.18(a)1.
- C. The Office alleges RCN failed to provide its customers the 1996 annual privacy notification, as required by 47 U.S.C. § 551(a), N.J.S.A. 48-5A-56(b) and N.J.A.C. 14:18-3.18(a)2.
- D. The Office alleges RCN failed to provide its customers the 1996 annual notification of the availability of its Senior Citizens/Disabled Discount, pursuant to N.J.A.C. 14:18-3.20 and as required by N.J.A.C. 14:18-3.18(a)4.
- E. The Office alleges RCN failed to provide its customers the 1996 annual notification of the availability of Devices for the Hearing Impaired, as required by N.J.A.C. 14:18-3.14(a)2 and 14:18-3.18(a)5.
- F. The Office alleges RCN failed to provide its customers the 1996 annual notification of the availability of Parental Lock Devices, as required by N.J.A.C. 14:18-3.14(a)1 and 14:18-3.18(a)6.
- G. The Office alleges RCN failed to provide its customers with the 1996 quarterly notifications of the availability of the Outage Credit Rule as outlined in N.J.A.C. 14:18-3.5, and as required by N.J.A.C. 14:18-3.18(b)1.
- H. The Office alleges RCN failed to provide its customers with the 1996 quarterly notifications of the availability of the Complaint Officer, as required by N.J.S.A. 48:5A-26(c) and N.J.A.C. 14:18-3.18(b)2.
- I. The Office alleges RCN failed to provide the date by which payment is due on monthly billing statements (past due billing statements), as required by N.J.A.C. 14:18-3.7(a)5.
- J. The Office alleges RCN failed to provide appropriate records, as outlined and required by N.J.A.C. 14:18-6.5.
- K. The Office alleges RCN failed to comply with a Renewal Certificate of Approval ("COA") for the Township of Raritan (Township) whereby a required one-time capital contribution was to be paid to the Township within ten (10) days of the issuance (September 14, 1998) of the COA. The contribution was not paid until January 27, 2000.
- L. The Office alleges RCN failed to obtain approval from the Board prior to a combination, merger or consolidation with another organization, pursuant to N.J.S.A. 48:5A-38 and 48:5A-40.

RCN submitted its monetary Offer of Settlement in the amount of \$35,500.00 in order to resolve all issues concerning the violations alleged by the Office. In addition to the monetary settlement, RCN has undertaken or agreed to complete the following remedial action:

- 1. RCN has provided recertification that the system has been reinspected and all grounding methods are in compliance with the New Jersey Cable Television Act and the New Jersey Administrative Code, pursuant to N.J.A.C. 14:18-2.1(a).

2. RCN has agreed to take the necessary corrective action to ensure that subscribers receive the proper and required notifications in the future, pursuant to N.J.A.C. 14:18-3.18(a)1, 2, 4, 5, 6 and (b)1, 2.
3. RCN has agreed to modify its past due billing statements to reflect that at least fifteen (15) days is allowed for payment of the current billing period, pursuant to N.J.A.C. 14:18-3.7(a)5.
4. RCN has agreed to institute a written work order/equipment control sheet process and protocol, pursuant to N.J.A.C. 14:18-6.5.
5. RCN has agreed to pay the Township of Raritan \$4,100.00 in interest as result of the delayed payment of the one-time capital contribution.

The Office recommends acceptance of this Offer of Settlement based upon the aforementioned commitments and compliance with the New Jersey Cable Television Act and the New Jersey Administrative Code. The Office will monitor the company's future notice requirements, billing practices and procedures and record keeping as set forth in the New Jersey Administrative Code.

On the morning of the June 6, 2001 agenda meeting, the Board received a letter dated June 5, 2001 from the Division of the Ratepayer Advocate ("RPA"). The RPA stated that it was submitting its comments to be considered by the Board in this matter, but then noted that it could not provide a recommendation regarding the merits of the proposed settlement because the RPA was not a part of the negotiations.¹ The RPA noted that this situation was similar to that addressed in its previous correspondence to the Board setting forth its objections to advice provided to the Board in a prior cable television enforcement matter (Docket No. CO01030165) regarding the authority of the RPA.

The RPA was not involved in the negotiations in the within matter as it relates solely to alleged administrative code and statutory violations with no impact on customer rates. Although the RPA referenced its prior correspondence regarding its view as to its role in cable television enforcement matters, the RPA has not requested that the Board defer its decision herein. As noted in the Board's June 5, 2001, Order Accepting Further Offer of Settlement in In the Matter of the Alleged Failure of Comcast Cablevision of New Jersey, LLC, et al. (Docket No. CO01030165), the Attorney's General Office is undertaking a comprehensive review of the RPA's role in cable television enforcement matters, and the Board retains the right to reopen a matter if warranted by this review.

Consistent with its Order in Docket No. CO01030165, the Board has reviewed the within matter and the recommendations of the Office, and HEREBY FINDS them to be reasonable. The Offer represents a reasonable settlement in view of the alleged violations and the operator's past compliance history. Therefore, the Board HEREBY ACCEPTS the Offer of Settlement proffered by RCN subject to the following provisions, conditions and/or limitations:

¹ At its June 6, 2001 agenda meeting, the Board noted that the RPA's letter had been faxed to the Board, and that N.J.A.C. 14:1-1.6(c) provides that "documents received via fax will neither be date/time stamped as formally received by the Board nor entered into the case record. Such documents shall only be distributed to the addressee." Subsequent to the Agenda meeting, it was learned that a hard copy of the RPA's letter had been received and time stamped in the Board's mailroom at 4:58 p.m. on June 5, 2001. The Board notes, however, that a submission received by the Board just prior to the close of business on the day before an agenda meeting also is not a timely submission.

1. RCN shall tender the \$35,500.00 monetary payment to the State of New Jersey within fifteen (15) days of the date of this Order.
2. RCN shall contact the Office of Cable Television within fifteen (15) days of the date of this Order and make the necessary arrangements to revise its billing format to comport with the company's marketing information and filed tariffs.
3. The Board's acceptance of the Offer of Settlement is for the purposes of this proceeding only, addresses only those specific allegations and timeframes addressed in the Offer of Settlement and its attachments and shall not be construed as limiting the Board's authority in any other matter affecting RCN.
4. For the purposes of assessing penalties for future offenses by RCN, such future offenses shall be considered subsequent offenses, in accordance with N.J.S.A. 48:5A-51(b).
5. RCN shall provide to the Office, within sixty (60) days of the date of this Order, proof of compliance for all Customer Rights notices (with copies of such notices), past due billing statements and record keeping in the form of a certified affidavit by an officer of the company.

DATED: July 6, 2001

BOARD OF PUBLIC UTILITIES
BY:

(signed)

CAROL J. MURPHY
ACTING PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)

FRANCES L. SMITH
BOARD SECRETARY